

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VALENT USA CORP and SUMITOMO
CHEMICAL CO, No C 08-720 VRW

ORDER

Plaintiffs,

v

SYGENTA CROP PROTECTION, INC,

Defendant.

On January 31, 2008, plaintiffs filed a complaint requesting a declaratory judgment of noninfringement and invalidity of defendant's patent related to insecticide. Doc #1. On March 14, 2008, defendant moved to dismiss the complaint for lack of subject matter jurisdiction on the ground that there was no credible threat that plaintiffs would be sued for infringement and thus no case or controversy. Doc #42. The motion was noticed for a hearing on April 18, 2008, but was later renoticed for April 25 and then June 5. After June 5 became unavailable, the court rescheduled the hearing for August 14, 2008. Plaintiffs have not yet filed an opposition to the motion to dismiss.

1 On May 27, 2008, plaintiffs' counsel sent the court a
2 letter requesting leave to file a motion for expedited discovery.
3 Doc #67. Counsel stated that plaintiffs plan to sell their
4 potentially infringing product in December 2008, in time for the
5 2009 annual planting season. Counsel asserts that "delaying
6 discovery and resolution even a few months can potentially delay
7 the introduction of the product for a year, since the relevant seed
8 treating and planting seasons are annual."

9 Defendant responds that any early discovery would be
10 prejudicial because, in its view, the court lacks jurisdiction over
11 the case. Doc #68. Defendant also disputes that plaintiffs'
12 requested discovery would further plaintiffs' asserted interest in
13 preparing its product for a December launch.

14 The court appreciates plaintiffs' business necessity time
15 pressures as well as defendant's contention that any discovery is
16 improper if the court lacks jurisdiction. Because the court is not
17 in a position to evaluate the merits at this time, the court will
18 proceed as follows:

- 19 (1) The court grants plaintiffs leave to file a motion for
20 expedited discovery;
- 21 (2) The clerk is directed to reschedule defendant's motion to
22 dismiss from August 14, 2008, to June 26, 2008, or such
23 later date as the parties arrange with the court's
24 deputy, Ms Cora Delfin-Klein, who may be reached at (415)
25 522-2039;
- 26 (3) The hearing on the motion to dismiss shall occur
27 concurrently with the hearing on the motion for expedited
28 discovery;

1 (4) No less than fourteen days before the hearing date,
2 plaintiffs shall file their motion for expedited
3 discovery as well as their opposition to defendant's
4 motion to dismiss;

5 (5) No less than seven days before the hearing date,
6 defendant shall file its opposition to plaintiffs' motion
7 for expedited discovery and its reply, if any, to
8 plaintiffs' opposition to the motion to dismiss; and

9 (6) No less than three days before the hearing date,
10 plaintiffs shall file their reply, if any, to defendant's
11 opposition to the motion for expedited discovery.

12
13
14 IT IS SO ORDERED.

15 
16

17 VAUGHN R WALKER

18 United States District Chief Judge